

REMARKS

These remarks are set forth in response to the final office action mailed March 18, 2004 (the "Final Office Action"). As this amendment has been timely filed within the three-month statutory period, neither an extension of time nor a fee is required. Presently, claims 1 through 15 are pending in the Patent Application. In the Final Office Action, each of claims 1 through 15 have been rejected under 35 U.S.C. §§102(e) and 103(a) as being both anticipated and unpatentable by and over United States Patent No. 6,377,548 to Chuah issued on April 23, 2002. Specifically, in the Final Office Action, the Examiner set forth four principal arguments in support of maintaining the rejections on the art.

All of the Examiner's principal arguments recite column 37 of the Chuah reference as the sole basis of support. The Examiner additionally has recited data communications principles of the art to further explain the Examiner's position in maintaining the rejections on the art. In response, the Applicants have carefully considered each argument with reference to the evidentiary support cited by the Examiner--namely column 37 of the Chuah reference and the noted data communications principles of the art. Additionally, the Applicants have reviewed the plain language of each of the claims of the Patent Application as filed. Consequently, the Applicants respectfully request reconsideration of the Patent Application and an allowance of all claims as filed without modification.

In page 2 of the Final Office Action, the Examiner first contends that the column 37 of the Chuah reference teaches a reference to "... a request from a host for a connection to a port number on the server..." as recited in the first limitation of independent claims 1, 5, 9 and 13 of the Patent Application. In support of this contention, the Examiner refers to an "AP receiving a

connection request" in Chuah in combination with known principles of data communication in which a "request for a port number on the server" is implied as shown by Karanjit Siyan, CNE TRAINING GUIDE: NetWare TCP/IP and NFS (New Riders Publishing 1994), at 76-82.

Though the Examiner has not issued a new rejection based upon 35 U.S.C. § 103(a) incorporating the Siyan reference, the Applicants will treat this contention as if an obviousness-type rejection has been issued strictly for the purpose of responding to this contention. Also, based upon this informal combination, the Applicants request that the **finality** of the Final Office Action be withdrawn so as to permit this new combination.

Addressing the Examiner's first contention of page 2 of the Final Office Action, the Applicants note that an obviousness-type rejection based upon the combination of two references cannot be sustained where the combination would render change the principle of operation of a reference. See M.P.E.P. 2143.01 citing In re Ratti, 270 F.2d 810 (CCPA 1959). In this case, Chuah lacks the ability to parse the incoming connection request for a "port number" according to the Internet Protocol (IP) format because the Chauh reference relates not to the data or transport layers of the OSI model (as noted in pages 4 and 5 of the Applicants' prior response to the Non-Final Office Action of October 3, 2003), but to cellular base stations which are not equipped to process TCP/IP data as stated in column 8. To modify the Chuah base stations to control connections based upon TCP/IP formatted communications packets and not media access control (MAC) frames as specified in column 8 of the Chuah reference would act to change entirely the principle of operation of Chuah which relies explicitly upon operations performed on MAC frames.

The Siyan reference, by comparison, relates exclusively to TCP/IP communications and cannot be adapted for use in a cellular wireless communications network. Accordingly, the combination of Chuah and Siyan would be unworkable rendering the combination inappropriate for purposes of supporting an obviousness-type rejection. Additionally, even without the support of the Siyan reference, it is well known that requests to cellular base stations do not incorporate IP port numbers and source and destination addresses as part of the cellular communications protocol. Thus, though the Applicants appreciate the Examiner's correct observation that port numbers can be implicit in a TCP/IP request, so much is not true for non-TCP/IP requests such as those described in column 37 of the Chuah reference.

Considering next the Examiner's second contention of page 3 of the Final Office Action, the Examiner states that column 37, lines 32-34 and 50-53 of Chuah teach "...if the number of connections to the port assigned to the host exceeds a prescribed threshold..." as explicitly recited in claims 1, 5, 9 and 13 of the Patent Application. Column 37, lines 32-34 state, "If QoS is maintainable 2044, the new connection will be admitted 2060; if not, the new connection will be denied admission 2065." Clearly, of the twenty-two words in this citation, not one word relates to the claimed elements "connections to a port assigned to the host" and "exceeds a prescribed threshold". Similarly, column 37, lines 50-53 state, "However, if a new class 1 user appears, the AP will send a disconnect message to one of the admitted class 2 users in order to admit the new class 1 user." As before, there are thirty-two words in this citation, none of which relate to connections to a port assigned to the host, or exceeding a prescribed threshold.

Indeed, the Applicants agree with the Examiner that column 37, lines 41-44 teaches the consideration of a threshold number of connected users to a base station when determining

whether to admit a new user without disconnecting an existing user, or whether to disconnect an existing user (of lower priority) to connect a new user to the cellular base station. Nevertheless, considering a threshold number of connected users differs substantially from determining whether connections to a port assigned to a host exceeds a prescribed threshold as "connections to a port assigned to the host" relates to the art of data communications and not cellular communications. It is not possible, physically speaking, for the base station of Chuah to inspect the port number of a request to connect to the base station in as much as there is no such thing as a port request in a request to connect to a base station in cellular communications.

Considering next the third contention of the Examiner on page 4 of the Final Office Action, the Examiner contends that Chuah teaches the limitation, "[O]verriding the denial and allowing the request if a quality of service parameter pertaining to the requesting host permits the override." as recited in dependent claims 2, 6, 10 and 14 of the Patent Application. Specifically, the Examiner refers to column 37, lines 41-55 of the Chuah reference. In column 37, lines 32-34, the sole column 37 reference to "QoS" can be found in the statement, "If QoS is maintainable 2055, the new connection will be admitted 2060; if not, the new connection will be denied admission 2065." Nowhere in lines 41-55 of column 37 is it suggested that a denial can be "overridden" based upon a QoS parameter as explicitly required by the clear claim language of claims 2, 6, 10 and 14. In this regard, the Applicants respectfully disagree with the Examiner's statement of page 5 that "This 'prioritized eviction' occurs...when the...QoS...parameter renders it such that is appropriate to disconnect lower priority users."

Finally, addressing the Examiner's fourth contention of page 6 of the Final Office Action, the Examiner contends that it is an implicit aspect of Chuah that a connection is "denied in any

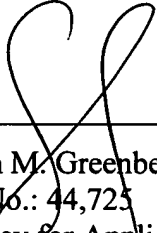
event if the number of available connections to the port are less than a constrained threshold."

Again, as discussed before, Chuah relates to the establishment and disestablishment of wireless connections to a cellular base station (referring specifically to Figure 2) performing connectivity operations based upon medium access control (MAC) frames over an air line as stated with specificity in column 7, line 60 through column 8, line 64. Importantly, column 7, line 67 explicitly equates "base station" with "access point" which when combined with the reliance upon MAC frames, indicate a clear distinction over conventional computer communications networking protocols--most notably TCP/IP. The concept of a request specifying a particular port from a particular host is foreign to the setup described in Chuah. Therefore, it cannot be implicit within the Chuah reference to disallow a connection "if the number of available connections to the port are less than a constrained threshold."

In summary, the teachings of Chuah are not sufficient to support the rejection of any of claims 1 through 15. For all of the above reasons, the claim objections are believed to have been overcome placing Claims 1 through 15 in condition for allowance, and reconsideration and allowance thereof is respectfully requested. Additionally, given the de facto new grounds for rejection based upon the citation of Siyan, the Applicants request the withdrawal of the finality of the Final Office Action. Consequently, the Applicants further request an on-site, personal interview with the Examiner to clarify with particularity the applicability of the Chuah reference to the claim language of the claims of the Patent Application. In the interim, the Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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